IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL APPEAL NO.549 OF 1994

1. Damu Rama Sawant

2. Sou. Lochanabai Damu Sawant — Appellants (Org.Accd. Nos.1 & 2)

Vs.

The State of Maharashtra — Respondent

Mr.Abhaykumar Apte h/f. Mr.T.E.Mane for appellants.
Dr.F.R.Shaikh, APP for State.

CORAM: S.S.PARKAR & ANOOP V.MOHTA,JJ.

February 24 & 25, 2005.

ORAL JUDGMENT (PER S.S.PARKAR,J.)

1. This appeal is filed against the judgment and order dated 17/9/1994 delivered by the IVth Addl. Sessions Judge, Solapur convicting the appellants for offence under Sections 302 and 201 both read with Section 34 of IPC in respect of the death of their daughter Angina and sentencing them to RI for life for offence of murder and RI for five years for offence under Section 201 of IPC in Sessions Case No.33 of 1994.

2. The prosecution case is as under:

. The appellants who are husband and wife were charged for the offence of murder of their own daughter Anjana who died in their residential house in the morning of 30th October 1993. PW 5 - Keshav Malhari Choudhari, who is nephew of appellant no.1 Damu, lodged report (Exh.20) at the police station. At about 6.45 a.m. accused no.1 went out of the house for defecating. On his return he found Anjana in burnt condition. Anjana was taken in a jeep to Barshi in the hospital of Hiremath where she was declared dead. Therefore, her body was brought back. On getting this information PW 7 Head Constable Patil, who was in charge of the station diary, went to the house of accused no.1 Damu in village Sasure and inspected the dead body in the presence of panchas. He noticed injuries on the left arm, left thigh, left leg below knee and right thigh which appeared to be cut wounds. The inquest panchanama (Exh.13) was drawn and the dead body was sent for post-mortem examination and autopsy was conducted on the dead body on 31/10/1993 by Dr.Patil PW 8 along with Dr. Mrs.Kesarhallimath. The doctors also

noticed ante mortem incised wounds over the body and 100 per cent post mortem burns. They also found eight weeks' pregnancy in the uterus. They issued advance certificate which is Exh.30. The post-mortem notes are produced on record at Exhibit 29. The place of offence was inspected by the Head Constable Patil on 31/10/1993 and spot panchanama was drawn which is Exhibit 24. The place of offence was the rear room of the house of the appellants in which marks of burns were noticed and pieces of broken bangles were found. One piece of bangle was also seen having clung to the wall. There were also blood stains on the wall and partly burnt pieces of clothes were lying in the room. Stove, aluminium pot and partly burnt hair were found in the Southern portion of the front room of the house. All the articles were seized under panchanama (Exh.24). Under the spot panchanama the earth mixed with blood was also attached. It was removed from the floor of the room. The appellants were arrested on 3rd November 1993. On 2nd November 1993 the appellants were examined by Dr.Patil who found superficial burns over different parts of their bodies. Statement of PW 1 Maruti, the paramour of deceased Anjana was recorded on 2/11/1993. On the basis of the statement of PW 1 and

the advance medical certificate (Exh.30) and the spot panchanama (Exh.24) API Kalghatgi, the Investigating Officer was satisfied that the appellants had murdered their daughter Anjana and, therefore, he lodged his own report (Exh.38) on 3/11/1993 on the basis of which crime was registered against the appellants who were arrested on the same day. At the time of arrest blood stains were noticed on the shirt and dhoti of accused no.1 which were also smelling of kerosene oil. The clothes of accused no.1 were also attached under the arrest panchanama. On 6/11/1993 accused no.1 volunteered to produce barber's razor which he had kept concealed in his own house with which he had caused injuries to Anjana. The memorandum of statement was recorded in the presence of panchas at Exh.17. He had taken the police and panchas to his own house and produced the razor (article no.16) which was hidden in the bamboo wall of his house. The same was seized under discovery panchanama (Exh.18). The clothes of the deceased, of accused no.1 and razor (article no.16) were sent to the office of CA at Pune for examination. As per the CA report kerosene residues were found in the partly burnt sweater of the deceased and the samples of earth scrapings, broken pieces of bangles, hair and

shirt and dhoti of accused no.1. Stains of human blood were also found on partly burnt sweater (article no.1) belonging to the deceased and sample of earth scrapings and the shirt (article no.14) and dhoti (article no.15) belong to accused no.1. After completing the investigation charge-sheet was filed and the case was committed to the Sessions Court.

3. Before the Sessions Court charges were framed against both the appellants for offences under Sections 302 and 201 read with 34 of IPC in connection with the death of their daughter Anjana Damu Sawant to which both the appellants pleaded not guilty. On behalf of the prosecution 11 witnesses had been examined out of whom some had turned hostile. PW 1 is Maruti Kawale, the paramour of deceased Anjana from whom according to the prosecution case Anjana had become pregnant, but he had turned hostile. PW 2 is Bhibhishan Hiratkarve who was panch for inquest panchanama who had also turned hostile. PW 3 is Kakasaheb Kanade who was panch for the recovery and attachment of clothes of accused no.1 and also had acted as panch for the recovery of barber's razor but had turned hostile

only in respect of the recovery. PW 4 is Baburao Bansode, police patil of the village. PW 5 is Keshav Choudhari, the nephew of accused no.1 who had lodged report (Exh.20) initially but had turned hostile. PW 6 is Chandrakant Gode who had acted as panch for the spot panchanama (Exh.24). PW 7 is Head Constable Patil who had recorded the report of PW 5. PW 8 is Dr.Patil who had conducted the post-mortem examination on the dead body. PW 9 is Vilas Zhawanjal, Circle Inspector from the Revenue Department who had drawn sketch of scene of offence which is produced at Exhibit 35. PW 10 is Constable Anbule who took articles to the office of C.A. at Pune. Lastly PW 11 is API Kalghatgi who investigated the case. The defence of the appellants was of total denial. They had filed identically worded written statements in which they had taken the plea of alibi stating that they were at the relevant time in the field of one Pandurang Karande who has been examined by them in support of their plea as Defence Witness no.2. One behalf of the defence one more witness was examined i.e. Dr.Ferwani as DW 1.

4. After considering the entire evidence on

record the trial Court by its impugned judgment and order dated 17/9/1994 had convicted both the appellants accused for offences under Sections 302 and 201 read with Section 34 of IPC and sentenced them as aforesaid. The said order of conviction and sentence is under challenge in this appeal filed by the appellants.

5. The defence Advocate Mr.Apte after taking us through the evidence on record contended that since the case is based on circumstantial evidence the appellants ought not to have been convicted unless the circumstances were established by the prosecution beyond reasonable doubt. He argued that it is unthinkable that the police would not notice the blood stained clothes of accused no.1 from the date of incident till he was arrested on 3rd November 1993. He also argued that recovery of blade cannot be relied by the prosecution as the recovery was made on 6th November 1993 though he was arrested on 3rd November 1993. He lastly argued that in view of the evidence of DW 2 Pandurang Karande, the accused not being at the relevant time at the place of offence, the appellants cannot be convicted for the murder of

their daughter.

6. We have gone through the entire evidence produced by the prosecution to establish the guilt of the appellants and also have perused the reasoning of the trial Court and find that following circumstances have been proved by the prosecution.

(1) Deceased Anjana had five incised wounds on her body which were ante mortem and there were 100 per cent burns.

(2) The incised wounds were inflicted on Anjana in the residential house of the appellants.

(3) She received burn injuries also in the residential house of the appellants. The dead body of Anjana was taken to the hospital at Barshi and brought back in order to create an impression that Anjana was taken to the hospital for treatment of burn

injuries when she was alive.

(4) At the time of her death Anjana was a minor girl who was unmarried and had two months' pregnancy in her uterus.

(5) At the relevant time both the appellants, deceased Anjana and sister of accused no.1 lived in the house where her dead body was found.

(6) Lastly there were superficial burn injuries on the persons of the appellants.

7. Besides the appellants one more person by name Tukaram Krishna Sawant was also implicated as accused no.3 but he was acquitted by the trial Court observing in para 47 of the judgment that he was not an inmate of the house and there is no clinching evidence against him.

8. The fact that Anjana was residing along with her parents who are the appellants in their residential house in village Sasure is not in dispute nor it is in dispute that deceased Anjana was unmarried daughter of the appellants and on the date of incident she had received burn injuries in the said residential house. Neither in their 313 statements nor in the written statements filed by the appellants there is denial of the aforesaid fact. It is not even the case of the defence in the cross-examination of the prosecution witnesses that the house in which Anjana received burn injuries was not the residential house of the appellants. What is tried to be shown on behalf of the appellants in their written statements (Exhibits 46-A and 47) is that at the relevant time they were in the field of DW 2 Pandurang Karande where they received a message through a child aged about 7-8 years, whose name is not disclosed, informing them that their daughter Anjana had sustained burns and, therefore, both of them went to their house along with DW 2. The said plea and the evidence of DW 2 was not believed by the trial Court and in our opinion rightly so. In their 313 statements not a word is uttered by any of the

appellants stating that they were staying that night in the field of DW 2 Karande. That was not the case put to the witnesses, not even to PW 5 who was the nephew of accused no.1 being his sister's son. Both the written statements filed by accused no.1 which is Exhibit 46-A and the other filed by accused no.2 at Exhibit 47 are identically worded. If that had been the case it would have been put to the witnesses in their cross-examination or nothing prevented the accused from so stating when their statements were recorded under Section 313 of Cr.P.C. by the trial Court. As per their written statements it has been stated that on that night both the appellants had to stay in the field of DW 2 Karande for work and in their house their son and daughter had stayed. The defence has not led the evidence of their son who, according to the written statements, was residing in their residential house on the preceding night and the morning of 30th October 1993. It is well established that the onus to prove the plea of defence of alibi lies on the accused though the standard of proof required to prove the said plea is not the same which is cast on the prosecution i.e. beyond reasonable doubt but only by establishing the plea by preponderance of probability. In our view

that burden is not discharged by the defence and the plea of alibi raised belatedly for the first time in written say is obviously an after thought.

9. The evidence of DW 2 Karande is on the face of it unreliable. He could have given the statement to the police on the date of the incident itself. He admits that before giving evidence in Court he had not disclosed to anybody including police that the appellants were staying in his field that day. He has deposed in the Court as follows:

"They stay in my field in the night."

That means they were staying in his field daily. He deposed that one boy went and told them that Anjana was burnt while preparing tea. From the written say it does not appear that it is the case of the appellants that they were always staying in the field of Karande or that they were generally or daily staying in the night in the field of Karande. Moreover from the spot panchanama it does not appear that Anjana must have caught fire while preparing tea in which case there would have been no smell of kerosene on the articles attached from the place of

incident nor there would have been blood stains on the wall of the said room or on the articles found in that room. Thus the theory of Anjana having caught fire while preparing tea on the stove is absolutely inconsistent with the facts and circumstances of the case on record and, therefore, the said plea is on the face of it and obviously false. In case of accidental burns there would not have been 100 per cent burns and somebody from the neighbourhood or her own brother who according to the appellants was staying in the same house that day would have rendered help to extinguish the fire. In that case there would not have been injuries which were incised wounds on the person of Anjana.

10. Once the plea of alibi raised by the appellants fails as being obviously false the appellants owe an explanation as to how their daughter Anjana received injuries on her person and how she caught fire. As they have failed to establish their absence from the place of incident where normally they were supposed to be, it was within their knowledge as to how Anjana received injuries and caught fire. Even their son who according to the appellants was in

their house had not come forward nor was he examined on behalf of the defence to throw light as to how Anjana received injuries on her person and caught fire. The trial Court in the aforesaid circumstances has rightly placed reliance on the judgment of the Supreme Court in the case of State of U.P. v. Dr. Ravindra Prakash Mittal reported in **1992 Cri.L.J. 3693**. That was also a case based on circumstantial evidence in which husband faced trial for committing the murder of his wife. The medical evidence disclosed that the wife had died due to strangulation and thereafter her body was set on fire after sprinkling kerosene. Husband's defence was that the wife had committed suicide by burning herself and he was not at home at that time. There was evidence of husband ill-treating his wife and the relations were strained and that he was in the house that night. Setting aside the order of High Court acquitting the accused-husband the Supreme Court held that the totality of circumstantial evidence revealed that it was the accused-husband who committed the murder of his wife by strangulation. Similarly recently in the case of Babu Raveendran v. Babu Bahuleyan and anr. reported in **(2003) 7 SCC 37** setting aside the order of acquittal of the husband recorded by the High

Court in respect of the murder of his wife the Supreme Court had convicted the husband of the offence of murder of his wife on the basis of the totality of circumstances where the body of wife was found in a well and the cause of death was proved to be due to strangulation. In that case couple was newly married and it was the second night after their wedding. There was evidence of attempted sexual intercourse which the wife seemed to have refused to her husband on the ground of his premarital sex with other woman. It was held that it was within the knowledge of the husband alone as to who and how the wife was strangulated, the husband also having three injuries on his neck.

11. In the present case also from the facts and circumstances no doubt arises that the appellants who were the parents of deceased Anjana were in the same house in the night of the incident and it was within their knowledge as to how Anjana received incised wounds on her body.

12. As per the medical evidence there was

pregnancy of eight weeks in the womb or uterus of Anjana. She was a minor and unmarried girl. That constitutes the motive for the accused to get enraged and end the life of Anjana. No doubt number of prosecution witnesses had turned hostile including PW 1 Maruti Kawle allegedly having love affair with the deceased, who should have been the complainant in this case but had turned hostile. Apart from the medical evidence the police were convinced on the basis of the statement of this witness recorded on 2/11/1993 and the post mortem report (Exh.29) received by the police that the appellants had killed their daughter. Thereafter API Kalghatgi lodged his own report (Exh.38) on 3/11/1993 on the basis of which the crime was registered and the accused were arrested.

13. The conduct of the appellants is also significant. In a case where their daughter was first injured and thereafter set on fire the appellant no.1 ought to have been the complainant if he really was away from his house at the time of the incident. He should have lodged complaint with the police to enquire about the death of his daughter but

instead he makes a drama of taking the daughter to the hospital at a time when she must be dead and then brings her back after she was declared dead before her admission to the hospital. This obviously must have been done with a view to create an impression on the people of the locality that Anjana received burn injuries and, therefore, she was taken to the hospital where she was declared dead. Probably he would have succeeded in his attempt to misrepresent or create wrong impression on others that she had died because of the accidental burn injuries or committed suicide by burning herself, had it not been for the fact that the medical evidence had conclusively proved that Anjana had received ante mortem injuries on her person which were in the nature of incised wounds and the burns on her body were post mortem. One can only sympathise with the parents who had to face the ignominy of their minor daughter becoming pregnant illicitly which drove one or both of them to murder her. But the conduct of the accused in subsequently burning her body by sprinkling kerosene on her person and thereafter making show of taking Anjana's body to the hospital on the pretext of getting medical aid shows that the act of the accused was intentional and calculated.

14. Police Patil Baburao Bansode PW 4 has deposed that on 30/10/1993 when he received information that Anjana, whom he knew, had died, he went to the house of the accused. At that time they were taking Anjana in a jeep to Vairag. They brought her body back in the village at about 3 p.m. While taking Anjana in the jeep the door of the jeep was closed but when her body was brought back he had told the accused not to cremate the dead body. He then took Keshav Chaudhari PW 5 who was the accused no.1's sister's son to Vairag Police Station where the latter lodged his report (Exh.20). PW 5 ultimately turned hostile and did not support even what was stated by him in his report filed in the police station which is Exhibit 20.

15. Though number of witnesses had turned hostile still there are certain glaring circumstances which point towards the guilt of the accused like the medical evidence that Anjana had received ante mortem incised wounds on her body and her burn injuries were post mortem. She must have been burned with a view

to cause disappearance of the evidence that Anjana had died due to injuries on her person. The finding of eight weeks' old foetus in the womb of Anjana was the motive for her murder, because though unmarried she had become pregnant which must be due to the illicit relationship she had allegedly with P.W. 1. Unfortunately PW 1 Maruti Kawle had also deviated from his police statement and did not support the prosecution. The finding of traces of blood in the room where Anjana had received burn injuries in the house of the appellants also supports the prosecution case that Anjana was murdered by causing injuries to her person before she was burnt. PW 3 Kanade was panch in respect of the attachment of clothes of accused no.1 which are shirt (article no.14) and dhoti (article no.15) both of which had blood stains. There was also recovery of barber's razor at the instance of accused no.1. PW 3 has supported the panchanama (Exh.15) under which the clothes of accused no.1 were attached. He has deposed, supporting the panchanama, that shirt, dhoti and cap on the person of accused no.1 were smelling of kerosene oil and had blood stains. He, however, initially did not support the recovery of barber's razor at the instance of appellant no.1. However, in

cross-examination when Additional Public Prosecutor was given permission by the Court to put the questions in the nature of cross-examination to the said witness, he supported the recovery of razor at the instance of appellant no.1. He supported the memorandum panchanama (Exh.17) and deposed that accused no.1 Damu had stated that he had kept concealed the razor in his house and would produce it. Police recorded that statement which is Exhibit 17. Thereafter accused no.1 accompanied the police and panch from the police station to Sasure i.e. his village where the appellants were residing. At the instance of accused no.1 the vehicle was stopped at a particular point from where accused, the police and panch went on foot to the shed. From the roof of that shed he took out the razor which was having wooden handle and its blade had blood stains on both the sides. It was seized under seizure panchanama (Exh.18). He identified the said razor (article no.16) in the Court which was recovered at the instance of accused no.1. He had also identified his signature on the label of its wrapper.

16. Though the trial Court has not placed reliance on the said recovery on the ground that the

witness had turned hostile, there is no reason to discard that evidence in view of the fact that he has ultimately proved it in his cross-examination by APP which deposition remained unshaken in his cross-examination made on behalf of the defence. It is well settled that the evidence of hostile witness cannot be discarded altogether. In this respect the judgment of the Supreme Court in the case of State of U.P. v. Chet Ram reported in **AIR 1989 SC 1543** is relevant. In the instant case the panch has ultimately supported the recovery fully in the cross examination. Moreover we have the evidence of Investigating Officer API Kalghatgi PW 11 who has also deposed about the said recovery of article no.16 at the instance of accused no.1 on 6/11/1993. The evidence of the Investigating Officer has not been shaken in his cross-examination by the defence. It is again well settled that even without the support of the panch witness the recovery can be believed on the basis of the evidence of the police officer unless the evidence of the police officer is shown to be otherwise unreliable. Reference may be made to the judgment of the Supreme Court in the case of State, Govt. of NCT of Delhi v. Sunil and anr. reported in **(2001) 1 SCC 652**. No effort was made

either in the trial court or in this Court on behalf of the defence to show as to why the evidence of the police officer should not be believed about the recovery of the blood stained razor at the instance of accused no.1.

17. The clothes of the deceased, the articles attached from the place of offence, the clothes of accused no.1 and the razor (article no.16) were sent for examination by CA. As per the CA report dated 31/1/1994 (Exh.42) the partly burnt cloth piece and soil collected from the place of offence were having human blood. Similarly the shirt and dhoti, the clothes attached from the person of accused no.1, were also found stained with human blood. Even the weapon (article no.16) recovered at the instance of accused no.1 as per the same CA report was stained with human blood but the blood group could not be determined as the results were inconclusive. The finding of human blood on the clothes of the accused is a circumstance which can be relied against the accused unless explained by him. The prosecution has also produced on record the CA report dated 31/1/1994 (Exh.43) as per which kerosene residues were detected

on the shirt and dhoti belonging to accused no.1 as well as bangle pieces and different packets of soil collected from the place of offence by scraping soil. Thus the finding of kerosene on the earth scrapings collected from the place of offence and on the clothes of accused no.1 as also the burnt cloth pieces attached from the place of incident negative the theory of accidental burning of Anjana while preparing tea. The aforesaid evidence proves that kerosene was sprinkled or poured on the person of Anjana to set her body on fire. Significantly no kerosene residue was detected on the weapon (article no.16) which indicates that the said weapon was used to cause injuries to the person of deceased Anjana before kerosene was sprinkled on her body and thereafter she was set on fire. That weapon must have been kept under the roof from where it was recovered at the instance of accused no.1 after killing her but before setting Anjana on fire.

18. It was argued on behalf of the defence that howcome the police could notice the blood on the clothes of accused after his arrest on the fourth day i.e. on 3/11/1993 but not earlier. The accused were

none other than the parents of the deceased and the police would be slow in even suspecting the parents to be the culprit. The accused no.1 cannot be expected to be so fool as to move about in the clothes when the stains of blood could be obviously noticed by any person without having to search for them. The spot panchanama was drawn on the following day i.e. on 31st October 1993 when the blood was noticed on the wall and other places in the residential house of the appellants. The police machinery was trying to find out the culprit. The police officer would not have suspected the involvement of the accused who were the parents of the deceased when the accused had made a show of taking the daughter to the hospital and bringing back after she was declared dead before admission. The Investigating Officer himself has deposed that he received the post mortem report (Exh. 29) on 2/11/1993 in which there was mention of pregnancy of eight weeks in the womb of the deceased as well as the incised wounds on her body. The police must, therefore, be in the search of a person who must have impregnated the deceased. They must have collected information about the illicit relations between PW 1 Maruti and Anjana and, therefore, they had recorded

the statement of Maruti PW 1 on 2nd November 1993. Thereafter police recorded the supplementary statements of the accused and others from which the Investigating Officer could gather that it was not Maruti PW 1, the paramour of Anjana who probably had illicit relationship with Anjana, nor anybody else but the father or the parents of Anjana must have murdered her due to the illegal child in her womb. In the supplementary statement of the accused he must have found that there was no proper explanation coming forth from the accused and, therefore, they were arrested on 3rd November 1993 after preparing the Police Officer's own report (Exh.38). It was when the crime was registered against the appellants on 3rd November 1993 that the Investigating Officer must have tried to search for blood stains if any on the clothes of the accused persons. It is common knowledge that the persons like the accused who were working in fields would not be immaculately dressed without any spots of mud etc. on their clothes. If the blood stains on his clothes had been visible, the accused would not have continued to wear clothes with blood stains. He must have continued to wear those clothes being himself satisfied that there were no visible blood stains on them. When the Investigating

Officer became sure that the parents were the culprits he must have minutely searched the blood stains on the clothes of the accused and after noticing them the mention had been made in the arrest panchanama which is supported without any hesitation by panch witness PW 3 Kanade. As pointed out earlier the CA report also mentions that the shirt (article no.14) and dhoti (article no.15) belonging to the accused were stained with human blood which was not explained by the accused.

19. On behalf of the accused Dr.Ferwani was examined as defence witness no.1 with a view to show that the post mortem burns can never be 100 per cent because the dead skin does not catch fire and they are very very superficial. This doctor is a retired Government doctor and had not seen the dead body of deceased Anjana. He has, however, admitted that if the kerosene oil is poured over the dead body and then set on fire it would cause 100 per cent burns which supports the medical evidence led by the prosecution through Dr.Patil PW 8 who had conducted the post mortem examination on the dead body. It must be appreciated that the learned Addl. Sessions

Judge who conducted the trial had taken pains and considered the evidence of Dr.Patil who was a prosecution witness and Dr.Ferwani examined on behalf of the defence by referring to the Medical Jurisprudence and Toxicology by Modi as well as by Dr.Bernard Knight so also by referring to Taylor's Medial Jurisprudence according to whom incised wounds could be noticed even when there are 100 per cent burns on the body. One has to bear in mind that it was not the case of cremation of the dead body but burning of the body only with kerosene sprinkled on it to create the impression that the person had died because of the burn injuries in which case only skin will have burnt superficially. With the help of the aforesaid works on Medical Jurisprudence the trial Court has demonstrated that even the tears caused due to the burn of the body can be distinguished from ante mortem lacerations. The trial Court, on the basis of the aforesaid medical authorities, has correctly appreciated the evidence of Dr.Patil and held that the incised wounds were ante mortem and the burns were post mortem.

20. Dr.Patil has also deposed that incised

wounds which were found on the person of the dead body were possible by use of razor (article no.16). The said razor was recovered at the instance of accused no.1 which was hidden in his own house. Naturally he had no time to wash that razor, as he must be in a hurry to hide the weapon first and then set fire to the body. After the incident the said room was kept closed. After setting the dead body on fire he must not have imagined that he would be suspected and he would have to produce the razor used by him. Moreover the injuries on the dead body were not only incised wounds but as per the medical evidence the veins had been cut. If the veins had been cut naturally the blood from the body must have oozed out and, therefore, the injuries though were not on the vital part of the body, could have caused the death of Anjana because of the oozing of the blood from her body. As per the evidence of Dr. Patil on internal examination he found right femoral and left femoral veins had been cut open. He also found left brachial vessels cut open and they were corresponding to the external injury nos.2, 3 and 1 respectively. The defence argument is that in that case pool of blood would have been noticed in the house. Surely the accused no.1 who could first kill

his daughter then with a view to cause disappearance of the evidence set her body on fire and thereafter make a show of taking her to the hospital for the purpose of medical aid or treatment, would not take care to clean the blood from the room before the body was set on fire is incredible. The floor of the house was not having tiles yet the blood which must have oozed out on the floor must have been wiped by the accused who had the cooperation of his wife also.

21. Both the accused were examined by Dr. Patil who had also conducted the post-mortem examination on the dead body. The accused were examined on 2/11/1993 by Dr.Patil before their arrest on 3/11/1993. As per the observations of the trial Court it appears that no requisition was submitted to Dr.Patil for examining accused nos.1 and 2. Both the accused had received superficial burns. Accused no.1 had received superficial burns on his ear, nostrils, upper lip and left scapula. Accused no.2 had received superficial burns on her left forearm, over and below right and left scapula. The accused themselves have not relied on the said burn injuries as having been received by them while extinguishing

fire on the person of the deceased as their defence is of alibi. They have tried to explain their burns by saying that they received those burn injuries when they put the wood for fire in the field for warming and they received burns due to the flames of the fire in the field. Even if it is assumed that the accused had received burn injuries in the house at the time of incident, the same cannot negative the prosecution case as the finding is that the burns on the deceased were post mortem and not ante mortem.

22. Thus from the aforesaid circumstances we are left in no doubt that Anjana had received homicidal death. The only question which remains to be answered is whether both the appellants can be held guilty for the offence of murder or only appellant no.1 alone is responsible for the same. From the circumstances which are established by the prosecution there can be no doubt that the appellant no.1, the father of the deceased, must have played active role in putting an end to the life of Anjana. Anjana being pregnant due to illicit sexual intercourse must have annoyed and irked both the parents. The barber's razor which was used to cause

ante mortem injuries to Anjana, which resulted in cutting of veins due to which the blood from the body had oozed out, was recovered at the instance of accused no.1. The clothes of accused no.1 being shirt (article no.14) and dhoti (article no.15) were stained with human blood. The clothes of accused no.2 were not found to be stained with blood. In the natural course the act to cause injuries to Anjana by use of barber's razor must be an act of accused no.1 only. For assaulting Anjana, a girl who was a minor with a feeling of guilt for being illegally pregnant, accused no.1 must not have required the help or assistance of accused no.2 who was also a lady in her late fifties and being mother of the girl cannot be presumed to have gone to the extent of taking part in assaulting her daughter with razor. We can understand her plight when charged with offence of murder along with her husband in not disclosing the truth. She must be in a real dilemma because if she had disclosed the role played by her husband with a view to save her skin, she would have landed her husband - accused no.1 in trouble and, therefore, the best thing in the circumstances for her was to keep

mum and mute as she is entitled to do so in a criminal trial where the onus is always on the prosecution, and allow the law to take its own course. Though she must be knowing everything as to how her daughter was killed but it would be too presumptuous to draw an inference that she must also be party to the crime of murder when the murder of Anjana could have been committed by accused no.1 alone. When Anjana was killed she had no option but to help her husband - accused no.1 in causing disappearance of evidence of killing her daughter by accused no.1. Except her presence in the house no other circumstance is established against her to infer her active participation or even to impute to her intention common with accused no.1 for ending her daughter's life. Maximum that we can say about her is that she must have been a silent spectator to what was done by accused no.1 as a helpless person. After Anjana was killed she must have helped accused no.1 for wiping out the blood which must have oozed out on the floor of the house and left some marks at other places in the house. Even thereafter it must be accused no.1 who must have planned to arrange for a

jeep and take Anjana to the hospital to make a show that she was taken for treatment of her burn injuries to the hospital though it must be known to both of them that she had already breathed her last before she was set on fire. We are, therefore, inclined to give benefit of doubt to appellant no.2, the mother of the deceased as regards the offence of murder but the same benefit cannot be given to her as regards offence under Section 201 of IPC is concerned as she certainly can be said to have participated in causing disappearance of evidence of murder by her husband.

23. Thus while we find appellant no.1 guilty of offence of murder as well as offence under Section 201 of IPC, the appellant no.2 can be held guilty only as regards offence under Section 201 read with Section 34 of IPC and not for offence of murder under Section 302 of IPC. From the record we find that appellant no.2 was in custody for a period of three and half months. She has been sentenced to suffer rigorous imprisonment for a period of five years by the trial Court for the said offence along with appellant no.1. Considering the totality of

circumstances though we are not inclined to confirm the sentence of five years of imprisonment imposed on her by the trial Court, we are of the view that it would not be just and proper to reduce her substantive sentence to period already undergone which is hardly three and half months. She could have resisted the attempt by accused no.1 to murder their daughter Anjana. Then things probably might have been different. In our opinion without being too lenient nor too harsh to appellant no.2, she can be sentenced to an imprisonment for a period of one year by imposing some fine on her.

24. In the result, we confirm the order of conviction and sentence recorded against appellant no.1 - original accused no. 1 - Damu Rama Sawant by the IVth Addl. Sessions Judge, Solapur in Sessions Case No.33 of 1994 on both the counts. Appellant no.2 - original accused no. 2- Sou Lochanabai Damu Sawant is acquitted of offence under Section 302 read with Section 34 of IPC, but her conviction for offence under Section 201 read with Section 34 of IPC

is confirmed. However, the sentence imposed on her for the said offence by the trial Court is reduced from RI for five years to RI for one year and to pay a fine of Rs.1000/- in default to suffer further imprisonment for three months. Appeal is thus partly allowed. Both the appellants shall surrender to their bail bonds forthwith.

(S.S.PARKAR,J.)

(ANOOP V.MOHTA,J.)